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SENATE

REPORT
No. 98–222

AUTHORIZING FUNDS FOR THE SETTLEMENT OF INDIAN CLAIMS IN THE TOWN OF LEDYARD, CONN.

SEPTEMBER 14 (legislative day, SEPTEMBER 12), 1983.—Ordered to be printed

Mr. ANDREWS, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 1499]

The Select Committee on Indian Affairs, to which was referred the bill (S. 1499) to authorize funds for the settlement of Indian claims in the town of Ledyard, Connecticut, having considered the same, reports favorably thereon and recommends that the bill do pass.

Strike out all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Mashantucket Pequot Indian Claims Settlement Act".

CONGRESSIONAL FINDINGS

SEC. 2. The Congress finds that—

(a) there is pending before the United States District Court for the District of Connecticut a civil action entitled Western Pequot Tribe of Indians v. Holdridge Enterprises Incorporated, et al., Civil Action No. H76–193 (D. Conn.), which involves Indian claims to certain public and private lands within the town of Ledyard, Connecticut;

(b) the pendency of this lawsuit has placed a cloud on the titles to much of the land in the town of Ledyard, including lands not involved in the lawsuit, which has resulted in severe economic hardships for the residents of the town;

(c) the Congress shares with the State of Connecticut and the parties to the lawsuit a desire to remove all clouds on titles resulting from such Indian land claims;

(d) the parties to the lawsuit and others interested in the settlement of Indian land claims within the State of Connecticut have reached an agreement which requires implementing legislation by the Congress of the United States and the Legislature of the State of Connecticut;

(e) the Western Pequot Tribe, as represented as of the time of the passage of this Act by the Mashantucket Pequot Tribal Council, is the sole successor in interest to the aboriginal entity generally known as the Western Pequot Tribe which years ago claimed aboriginal title to certain lands in the State of Connecticut; and

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(f) The State of Connecticut is contributing twenty acres of land owned by the State of Connecticut to fulfill this Act. The State of Connecticut will construct and repair three sections of paved or gravel roadways within the reservation of the Tribe. The State of Connecticut has provided special services to the members of the Western Pequot Tribe residing within its borders. The United States has provided few, if any, special services to the Western Pequot Tribe and has denied that it had jurisdiction over or responsibility for said Tribe. In view of the provision of land by the State of Connecticut, the provision of paved roadways by the State of Connecticut, and the provision of special services by the State of Connecticut without being required to do so by federal law, it is the intent of Congress that the State of Connecticut not be required to otherwise contribute directly to this claims settlement.

DEFINITIONS

SEC. 3. For the purposes of this Act—

(1) The term "Tribe" means the Mashantucket Pequot Tribe (also known as the Western Pequot Tribe) as identified by chapter 832 of the Connecticut General Statutes and all its predecessors and successors in interest. The Mashantucket Pequot Tribe is represented, as of the date of the enactment of this Act, by the Mashantucket Pequot Tribal Council;

(2) The term "land or natural resources" means any real property or natural resources, or any interest in or right involving any real property or natural resources, including without limitation minerals and mineral rights, timber and timber rights, water and water rights, and hunting and fishing rights.

(3) The term "private settlement lands" means—

(A) the eight hundred acres, more or less, of privately held land which are identified by a red outline on a map filed with the Secretary of the State of Connecticut in accordance with the agreement referred to in section 2(d) of this Act, and

(B) the lands known as the Cedar Swamp which are adjacent to the Mashantucket Pequot Reservation as it exists on the date of the enactment of this Act. Within thirty days of the enactment of this Act, the Secretary of the State of Connecticut shall transmit to the Secretary a certified copy of said map.

(4) the term "settlement lands" means—

(A) the lands described in sections 2(a) and 3 of the Act to Implement the Settlement of the Mashantucket Pequot Indian Land Claims as enacted by the State of Connecticut and approved on June 9, 1982, and

(B) the private settlement lands.

(5) the term "Secretary" means the Secretary of the Interior;

(6) the term "transfer" means any transaction involving, or any transaction the purpose of which was to effect, a change in title to or control of any land or natural resources, and any act, event, or circumstance that resulted in a change in title to, possession of, dominion over, or control of land or natural resources, including any sale, grant, lease, allotment, partition, or conveyance, whether pursuant to a treaty, compact or statute of a State or otherwise.

(7) the term "reservation" means the existing reservation of the Tribe as defined by chapter 824 of the Connecticut General Statutes and any settlement lands taken in trust by the United States for the Tribe.

APPROVAL OF PRIOR TRANSFERS; EXTINGUISHMENT OF ABORIGINAL TITLES AND INDIAN CLAIMS

SEC. 4. (a) Any transfer before the date of enactment of this Act from, by, or on behalf of the Tribe or any of its members of land or natural resources located anywhere within the United States, and any transfer before the date of enactment of this Act from, by, or on behalf of any Indian, Indian nation, or tribe or band of Indians of land or natural resources located anywhere within the town of Ledyard, Connecticut, shall be deemed to have been made in accordance with the Constitution and all laws of the United States, including without limitation the Trade and Intercourse Act of 1790, Act of July 22, 1790 (ch. 33, Sec. 4, 1 Stat. 137, 138), and all amendments thereto and all subsequent reenactments and ver-

sions thereof, and Congress hereby does approve and ratify any such transfer effective as of the date of said transfer.

(b) By virtue of the approval and ratification of a transfer of land or natural resources effected by subsection (a), any aboriginal title held by the Tribe or any member of the Tribe, or any other Indian, Indian nation, or tribe or band of Indians, to any land or natural resources the transfer of which was approved and ratified by subsection (a) shall be regarded as extinguished as of the date of such transfer.

(c) By virtue of the approval and ratification of a transfer of land or natural resources effected by this section, or the extinguishment of aboriginal title effected thereby, any claim (including any claim for damages for trespass or for use and occupancy) by, or on behalf of, the Tribe or any member of the Tribe or by any other Indian, Indian nation, or tribe or band of Indians, against the United States, any State or subdivision thereof or any other person which is based on—

(1) any interest in or right involving any land or natural resources the transfer of which was approved and ratified by subsection (a), or

(2) any aboriginal title to land or natural resources the extinguishment of which was effected by subsection (b), shall be regarded as extinguished as of the date of any such transfer.

(d) Nothing in this section shall be construed to affect or eliminate the personal claim of any individual Indian (except for federal common law fraud claim) which is pursued under any law of general applicability that protects non-Indians as well as Indians.

(e)(1) This section shall take effect upon the appropriation of $900,000 as authorized under subsection 5(e) of this Act.

(2) The Secretary shall publish notice of such appropriation in the Federal Register when the funds are deposited in the fund established under subsection 5(a) of this Act.

MASHANTUCKET PEQUOT SETTLEMENT FUND

SEC. 5. (a) There is hereby established in the United States Treasury an account to be known as the Mashantucket Pequot Settlement Fund (hereinafter referred to in this section as the "Fund"). The Fund shall be held in trust by the Secretary for the benefit of the Tribe and administered in accordance with this Act.

(b)(1) The Secretary is authorized and directed to expend, at the request of the Tribe, the Fund together with any and all income accruing to such Fund in accordance with this subsection.

(2) Not less than $600,000 of the Fund shall be available until January 1, 1985, for the acquisition by the Secretary of private settlement lands. Subsequent to January 1, 1985, the Secretary shall determine whether and to what extent an amount less than $600,000 has been expended to acquire private settlement lands and shall make that amount available to the Tribe to be used in accordance with the economic development plan approved pursuant to paragraph (3).

(3)(A) The Secretary shall disburse all or part of the Fund together with any and all income accruing to such Fund (excepting the amount reserved in paragraph (2)) according to a plan to promote the economic development of the Tribe.

(B) The Tribe shall submit an economic development plan to the Secretary and the Secretary shall approve such plan within 60 days of its submission if he finds that it is reasonably related to the economic development of the Tribe. If the Secretary does not approve such plan, he shall, at the time of his decision, set forth in writing and with particularity, the reasons for his disapproval.

(C) The Secretary may not agree to terms which provide for the investment of the Fund in a manner inconsistent with the first section of the Act of June 24, 1938 (52 Stat. 1037), unless the Tribe first submits a specific waiver of liability on the part of the United States for any loss which may result from such an investment.

(D) The Tribe may, with the approval of the Secretary, alter the economic development plan subject to the conditions set forth in subparagraph (B).

(4) Under no circumstances shall any part of the Fund be distributed to any member of the Tribe unless pursuant to the economic development plan approved by the Secretary under paragraph (3).

(5) As the Fund or any portion thereof is disbursed by the Secretary in accordance with this section, the United States shall have no further trust responsibility

to the Tribe or its members with respect to the sums paid, and subsequent expenditures of these sums, or any property other than private settlement lands or services purchased with these sums.

(6) Until the Tribe has submitted and the Secretary has approved the terms of the use of the Fund, the Secretary shall fix the terms for the administration of the portion of the Fund as to which there is no agreement.

(7) Lands or natural resources acquired which are located within the settlement lands shall be held in trust by the United States for the benefit of the Tribe.

(8) Land or natural resources acquired under this subsection which are located outside of the settlement lands shall be held in fee by the Mashantucket Pequot Tribe, and the United States have no further trust responsibility with respect to such land and natural resources. Such lands or natural resources shall not be subject to any restriction against alienation under the laws of the United States.

(9) Notwithstanding the provisions of the first section of the Act of August 1, 1888 (25 Stat. 357, chapter 728), as amended, and the first section of the Act of February 26, 1931 (46 Stat. 1421, chapter 307), the Secretary may acquire land or natural resources under this section from the ostensible owner of the land or natural resources only if the Secretary and the ostensible owner of the land or natural resources have agreed upon the identity of the land or natural resources to be sold and upon the purchase price and other terms of sale. Subject to the agreement required by the preceding sentence, the Secretary may institute condemnation proceedings in order to perfect title, satisfactory to the Attorney General, in the United States and condemn interests adverse to the ostsensible owner.

(c) For the purpose of subtitle A of the Internal Revenue Code of 1954, any transfer of private settlement lands to which subsection (b) applies shall be deemed to be an involuntary conversion within the meaning of section 1033 of such code.

(d) The Secretary may not expend on behalf of the Tribe any sums deposited in the Fund established pursuant to subsection (a) of this section unless and until he finds that authorized officials of the Tribe have executed appropriate documents relinquishing all claims to the extent provided by sections 4 and 10 of this Act, including stipulations to the final judicial dismissal with prejudice of its claims.

(e) There is authorized to be appropriated $900,000 to be deposited in the Fund.

JURISDICTION OVER RESERVATION

SEC. 6. Notwithstanding the provision relating to a special election in section 406 of the Act of April 11, 1968 (82 Stat. 80; 25 U.S.C. 1326), the reservation of the Tribe is declared to be Indian country subject to State jurisdiction to the maximum extent provided in title IV of such Act.

LIMITATION OF ACTIONS; FEDERAL COURT JURISDICTION

SEC. 7. (a) Notwithstanding any other provision of law, the constitutionality of this Act may not be drawn into question in any action unless such question has been raised in—

(1) a pleading contained in a complaint filed before the end of the one-hundred-and-eighty-day period beginning on the date of the enactment of this Act, or

(2) an answer contained in a reply to a complaint before the end of such period.

(b) Notwithstanding any other provision of law, exclusive jurisdiction of any action in which the constitutionality of this Act is drawn into question is vested in the United States District Court for the District of Connecticut.

(c) Any action to which subsection (a) applies and which is brought in the court of any State may be removed by the defendant to the United States District Court for the District of Connecticut.

(d) Except as provided in this Act, no provision of this Act shall be construed to constitute a jurisdictional act, to confer jurisdiction to sue, or to grant implied consent to any Indian, Indian nation, or tribe or band of Indians to sue the United States or any of its officers with respect to the claims extinguished by the operation of this Act.

RESTRICTION AGAINST ALIENATION

SEC. 8. (a) Subject to subsection (b), lands within the reservation which are held in trust by the Secretary for the benefit of the Tribe or which are subject to a Federal restraint against alienation at any time after the date of the enactment of this Act shall be subject to the laws of the United States relating to Indian lands, including section 2116 of the Revised States (25 U.S.C. 177).

(b) Notwithstanding subsection (a), the Tribe may lease lands for any term of years to the Mashantucket Pequot Housing Authority, or any successor in interest to such Authority.

EXTENSION OF FEDERAL RECOGNITION AND PRIVILEGES

SEC. 9. (a) Notwithstanding any other provision of law, Federal recognition is extended to the Tribe. Except as otherwise provided in this Act, all laws and regulations of the United States of general application to Indians or Indian nations, tribes or bands of Indians which are not inconsistent with any specific provision of this Act shall be applicable to the Tribe.

(b) The Tribe shall file with the Secretary a copy of its organic governing document and any amendment thereto. Such instrument must be consistent with the terms of this act and the Act to Implement the Settlement of the Mashantucket Pequot Indian Land Claim as enacted by the State of Connecticut and approved June 9, 1982.

(c) Notwithstanding any other provision of law, the Tribe and members of the Tribe shall be eligible for all Federal services and benefits furnished to federally recognized Indian tribes as of the date of enactment of this Act.

OTHER CLAIMS DISCHARGED BY THIS ACT

SEC. 10. Except as expressly provided herein, this Act shall constitute a general discharge and release of all obligations of the State of Connecticut and all of its political subdivisions, agencies, departments, and all of the officers or employees thereof arising from any treaty or agreement with, or on behalf of the Tribe or the United States as trustee therefor.

INSEPARABILITY

SEC. 11. In the event that any provision of section 4 of this Act is held invalid, it is the intent of Congress that the entire Act be invalidated. In the event that any other section or provision of this Act is held invalid, it is the intent of Congress that the remaining sections of this Act shall continue in full force and effect.

PURPOSE

The purpose of S. 1499 is to provide Congressional ratification and implementation of a settlement of claims to land and consequential damages that have been raised by the Mashantucket Pequot Tribe (also known as the Western Pequot Tribe) arising from transfers of land formerly held by the Tribe that allegedly violated the Nonintercourse Act provision of the Trade and Intercourse Act. The land claimed by the Tribe comprises about 800 acres in the town of Ledyard, Connecticut. The settlement embodied in this Act was negotiated by the Mashantucket Pequot Tribe, the private landowners affected by the claim, and the State of Connecticut.

HISTORICAL BACKGROUND

Shortly before the arrival of European settlers, the Pequot Tribe established villages along the shores of Long Island Sound between the Niantic River and the present day border of Rhode Island. Ac-

cording to early accounts of Dutch settlers, the Pequot Tribe was the most powerful tribe in the Connecticut River valley and exacted tributed from surrounding tribes.

The first English settlements in Connecticut were authorized in 1632 under the authority of the Council for New England. Later, in 1636, emigrants from Massachusetts Bay Colony established additional settlements. The following year, the settlers and the Pequot Tribe engaged in a fierce war that resulted in the total defeat of the Tribe. The treaty sealing the victory for the English settlers split the surviving members of the Tribe into small groups and placed them under the authority of other, rival tribes in the area. Those Pequot Indians who were placed under authority of the Narrangansett Tribe fled to their old tribal homelands in western Rhode Island and became known as the Eastern Pequot. Those members of the Pequot Tribe who were made subject to the Mohegan tribe, itself an offshoot of the original Pequot Tribe, eventually returned to mouth of the Thames River and became known as the Western Pequot.

In 1666, the General Court of the Colony of Connecticut approved the establishment of a 2,000 acre reservation for the Western Pequot Tribe in what is now Ledyard. A few years earlier, the Tribe had been released from its subservience to the Mohegan Tribe and was under the leadership of Robin Casasinamon, a member of the Tribe. The creation of the reservation was followed by a long history of instrusions and encroachments by settlers in the area. These encroachments caused the Tribe to petition the Colony of Connecticut for relief.

In 1725, all Indian tribes in Connecticut were placed under the jurisdiction of the Governor and Council of Connecticut. Because the intrusions and encroachments continued, the Tribe continued to petition the colony and, in 1761, the General Assembly of Connecticut confirmed fee simple title in the Tribe to a 989 acre tract of land in what is now Ledyard. This tract included lands now claimed by the Western Pequot Tribe.

The tribe held title to the 989 acres until 1855 when the Connecticut General Assembly authorized the County Court to sell all but about 200 acres of the Tribe's land. Seven hundred thirteen acres of the tract were subsequently sold and the proceeds administered by an overseer for the benefit of the Tribe.

At present, the Tribe holds 184 acres of land in Ledyard in fee simple and there are 187 tribal members. (For further information on the Western Pequot Tribe see "Report on Terminated and Nonfederally Recognized Indians: Task Force Ten, Final Report to the American Indian Policy Review Commission." October 1976 pp. 77–79.)

NATURE OF THE CLAIM

The claim of the Mashantucket Pequot Tribe is based on the allegation that the land in its possession in 1855 was transferred from it without the federal approval allegedly required by the Nonintercourse Act provision of the Trade and Intercourse Act. The Trade and Intercourse Act was enacted by the First Congress of the United States in its second session. It consisted of several sections that regulated a wide variety of activities between Indians and Indian tribes and non-

Indians. One section contained a restraint against the alienation of Indian lands. This section, which has since become popularly know as the "Nonintercourse Act," provided in pertinent part:

> That no sale of lands made by any Indians, or any nation or tribe of Indians within the United States, shall be valid to any person or persons, or to any state, whether having the right of pre-emption to such lands or not, unless the same shall be made and duly executed at some public treaty, held under the authority of the United States (Act of July 22, 1970, ch. 33 sec. 4, 1 Stat. 137).

The Nonintercourse Act was intended to protect Indian tribes from entering into improvident or unfair transactions affecting their lands. It was also intended to protect the United States and its citizens from the hostilities with aggrieved Indian tribes that might ensue from such transactions. Finally, by requiring final federal approval of Indian land transactions, the Nonintercourse Act enabled the federal government to regulate the settlement of Indian lands.

The Trade and Intercourse Act of 1790 provided that the Act was to expire at the end of the first congressional session ending more than two years after the date of the enactment of the Act. In 1793, before the Trade and Intercourse Act of 1790 expired, Congress reentered the Act and altered the Nonintercourse Act provision to apply to any "purchase or grant of lands, or of any title or claim thereto." The phrase "within the United States" in the original Nonintercourse Act was changed to read "within the bounds of the United States" and the Nonintercourse Act was further altered to provide that transactions which violated its terms would be of no "validity in law or equity" unless entered into "pursuant to the Constitution." The 1793 version of the Nonintercourse Act also made it a misdemeanor punishable by up to a year in prison and a fine of up to $1,000 for any person to treat "directly or indirectly . . . with any such Indians, nation or tribe of Indians, for the title or purpose of any lands by them held, or claimed" unless that person was acting "under the authority of the United States." Additional changes not set forth here were made in the 1783 revision of the Nonintercourse Act, and further changes were also made in the succeeding versions of the Nonintercourse Act as well as in other sections of the Trade and Intercourse Act.

After 1793, the Trade and Intercourse Act was reenacted in 1796, 1799, and, in 1802, was indefinitely extended. In 1834, the Nonintercourse Act was reenacted as part of a general revision of the Trade and Intercourse Act. The Nonintercourse Act was included in the Revised Statutes of the United States in 1873 and is currently set forth at 25 U.S.C. 177. Although the Nonintercourse Act was reenacted by Congress a number of times as described above, there remains a significant difference of legal opinion as to the extent to which Congress intended the Act to apply in the territory of the original thirteen states. For a long period of time, it was widely assumed that the Nonintercourse Act did not apply throughout the original thirteen states. In any litigation today concerning an Indian tribe's claim to land based on the Nonintercourse Act, the applicability of the Act is likely to be a matter of contention between the parties and to require the court to examine

historical evidence on such issues as the efforts of the United States to participate in the contested land transfers, the previous relationship of the state to the tribe, and the condition of the tribe at the time of the transaction. This Committee expresses no opinion on the merits of these issues in any particular case or generally nor does it express an opinion on the breadth of the applicability of the Nonintercourse Act.

NEED

In filing its lawsuit, the Mashantucket Pequot Tribe did not sue all individual property owners that it might have sued. Nevertheless, the pendency of the Mashantucket Pequot claim has placed a cloud on the titles of private property owners in the claims area. These private parties did not participate in the contested transfers of land.

The litigation of this claim would involve extremely complex issues turning on events that, in some instances, occurred more than 200 years ago. Furthermore, litigation of this claim would require that a wide variety of novel legal issues be addressed, which in turn would lead to many interlocutory appeals. The resolution of such litigation could take many years. In the meantime, all property owners in the claims area would find any transactions relating to their land or natural resources impeded or frustrated by the taint of the pending claim.

LEGISLATIVE HISTORY

S. 1499 is a successor to several other bills. S. 2719 was introduced in the 97th Congress, on July 1, 1982 by Senators Dodd and Weicker and was referred to the Select Committee on Indian Affairs. The Committee held a hearing on S. 2719 on July 14 and at a markup held on August 18, ordered the bill reported with an amendment in the nature of a substitute. The bill was reported on September 29, 1982. A companion measure, H.R. 6612, was introduced in the House of Representatives and was the subject of hearings before the Interior and Insular Affairs Committee on July 15, 1982. That Committee ordered the bill reported on August 11, 1982.

On October 1, 1982, the bill, with amendment, was passed by the House. On December 17, 1982, the Senate, by amendment, substituted the language of S. 2719 for that of H.R. 6612 and as such passed the bill. On December 21, 1982, the unanimous consent request to agree to the Senate amendment was rejected by the House.

In the 98th Congress, on February 1, 1983, S. 366 was introduced by Senators Dodd and Weicker and was referred to the Select Committee on Indian Affairs. The Committee at a markup held on February 23 ordered the bill reported without amendment. The bill was reported to the Senate without amendment and without a written report. The bill with an amendment proposed by Senator Baker for Senator Andrews passed the Senate on February 24th. The bill was referred to the House Committee on Interior and Insular Affairs on February 28th. On March 22nd the Bill was discharged by unanimous consent from the House Committee on Interior and Insular Affairs and passed by the House. On March 24th the measure was presented to the President. On April 5th, S. 366 was vetoed by the President.

The President's message to the Senate set forth his reasons for failing to approve it: The claim is against the State of Connecticut and private landowners and yet the Federal Government would make the largest contribution to the settlement; the settlement required of the Federal Government does not comply with the formula for evaluating such claims that the Administration adopted; the state contribution is unacceptably low. It must assume at least 50% of any settlement costs; and the Pequot Tribe should not be recognized by Congress but should be acknowledged through the Federal Acknowledgment Project in the Bureau of Indian Affairs, of the Department of the Interior.

Negotiations between the Committee, Senator Weicker, and the Administration were conducted utilizing the good office of Majority Leader Baker. S. 1499 is the product of those negotiations. Section 2 (f) of the Bill recognizes an additional state contribution. The Committee on July 21, 1983 held oversight hearings on the efficiency of the recognition project of the Bureau of Indian Affairs of the Department of the Interior. The Committee is pleased that the Administration will hold itself available to participate in claims negotiations and hopes that its participation will facilitate appropriate solutions to the yet unresolved claims.

S. 1499 was introduced on by Senators Dodd and Weicker and was referred to the Select Committee on Indian Affairs. The Committee held a hearing on S. 1499 on July 19, 1983 and at a markup was held on July 28th ordered the bill reported without amendment.

COMMITTEE RECOMMENDATION

The Select Committee on Indian Affairs at markup held on July 28th recommends that the Senate pass S. 1499 as introduced. Senator Goldwater dissents.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 provides that the Act may be cited as the "Mashantucket Pequot Indian Claims Settlement Act,"

Section 2. Congressional findings

Section 2(a) states that a claim is pending in federal district court in Connecticut to certain public and private lands within the town of Ledyard, Connecticut. The claims referred to are those raised by the Mashantucket Pequot Tribe based on alledged violations of the Nonintercourse Act.

Section 2(b) finds that the lawsuit has placed a cloud on titles to land in the claims area, including those lands not specifically named in the lawsuit and, as a result, the residents of Ledyard, Connecticut have suffered economic hardship.

Section 2(c) finds that Congress, the State of Connecticut, and the parties to the lawsuit, including the Mashantucket Pequot Tribe, all desire to remove the cloud on land titles resulting from the claim.

Section 2(d) finds that the parties to the lawsuit and other parties

interested in the claim have reached an agreement to which the State of Connecticut is a party. The settlement referred to requires the enactment of implementing legislation by Congress and by the legislature of the State of Connecticut.

Section 2(e) finds that the Mashantucket Pequot Tribal Council as now constituted is the sole successor in interest to the aboriginal group known as the Western Pequot Tribe. This finding is intended to make it clear that the Mashantucket Pequot Indian Claims Settlement Act in no way affects the interests, whatever they may be, of the Paucatuck Pequot Tribe (also known as the Eastern Pequot Tribe).

Section 2(f) finds that the State of Connecticut is contributing 20 acres of State land to the settlement. This subsection also finds that the State of Connecticut has contributed special services to the Mashantucket Pequot Tribe and the State of Connecticut will construct and repair three sections of paved or gravel roadways within the reservation of the Tribe. Testimony on the extent of these contributions is found in the Committee hearings on S. 2719 and S. 1499. The Committee also notes that, according to all the testimony it has received, there is no evidence that the United States attempted to apprise the State of Connecticut that its land transactions in any way violated the Nonintercourse Act. In light of these contributions of land and services, it is the intent of Congress that the State of Connecticut not be required to make any further direct contribution to this claim settlement.

Section 3. Definitions

Section 3(a) defines the term "Tribe" to mean the Mashantucket Pequot Tribe (also known as the Western Pequot Tribe) including all its predecessors and successors in interest. This definition recognizes the Mashantucket Pequot Tribal Council as the political body representing the Tribe and is intended to make it clear that Congress recognizes the Council as having the sole authority to act on the Tribe's behalf in this settlement.

Section 3(b) defines the term "land or natural resources" to mean any and all conceivable interests in real property or natural resources including the list of specific interests that are set forth in the definition. This definition is to be broadly construed and is not limited to the interests that are specifically referred to in the Act. This definition is consistent with the definition of "land and other natural resources" included in the Maine Implementing Act as passed by the Maine State Legislature.

Section 3(c) defines the term "private settlement lands" to mean the approximately eight hundred acres of land that are now privately held and that are designed on a map filed with the Secretary of State of Connecticut. The term also includes lands known as the Cedar Swamp that are adjacent to the Mashantucket Pequot Reservation. This subsection provides that the Secretary of State of the State of Connecticut must transmit a copy of the map filed with him pursuant to the agreement in section 2(d) of this Act to the Secretary of the Interior within 30 days of the enactment of this Act.

Section 3(d) defines the term "settlement lands" to mean the lands identified in section 2(a) and 3 of the "Act to Implement the Settle-

ment of the Mashantucket Pequot Indian Land Claims" which was enacted by the General Assembly of the State of Connecticut and approved by the Governor on June 9, 1982. Section 2(a) of that Act confirms fee simple title in the Mashantucket Pequot Tribe to the land that currently comprises the Tribe's reservation. Section 3 of that Act authorizes the Governor to convey two parcels of land which, taken together, comprise approximately 20 acres and which are currently held by the State of Connecticut.

The Committee notes that S. 2719 as introduced contained a definition of the term "public settlement lands." The separate definition of that term was eliminated because the term appeared nowhere in the bill except as part of the definition of the related term "settlement lands." Rather than retain a separate definition of the term "public settlement lands", the Committee has incorporated the substance of the definition of the term "settlement lands."

Section 3(e) defines the term "Secretary" to mean the Secretary of the Interior.

Section 3(f) defines the term "transfer" to mean any transaction involving, or any transaction the purpose of which was to effect, a change in title to or control of land or natural resources and any other interest therein. This term is intended to have a comprehensive meaning and to cover all conceivable events and circumstances under which title, possession, dominion, or control of land or natural resources can pass from one person or group of persons to another person or group of persons. The Committee notes that this definition differs in some particulars from the definition of "transfer" in section 3(n) of the Maine Indian Claims Settlement Act (P.L. 96–420, 94 Stat. 1785). These differences are stylistic only and are not to be interpreted as effecting a substantive difference between the two definitions.

Section 3(g) defines the term "reservation" to mean the reservation of the Mashantucket Pequot Tribe as set forth in chapter 824 of the Connecticut General Statutes. The term also includes any land taken in trust by the United States for the Tribe that comes within the definition of "settlement lands" set forth at subsection 3(d) of this Act. This also includes the 20 acres of public lands and the "private settlement lands" as defined in subsection 3(c) of this Act.

Section 4. Approval of prior transfers; extinguishment of aboriginal titles and Indian claims

Section 4(a) provides Congressional approval and ratification of all prior transfers of land or natural resources located anywhere in the United States by or on behalf of the Mashantucket Pequot Tribe. It also provides Congressional approval and ratification of all prior transfers of land or natural resources located in the town of Ledyard, Connecticut by or on behalf of any Indian, Indian nation, or tribe or band of Indians. The term "land or natural resources" and "transfer" are broadly defined in section 3.

Subsection 4(a) provides specific Congressional approval of all transfers by or on behalf of any Indian, Indian nation, or tribe or band of Indians as may be required by the Constitution of the United States, the Nonintercourse Act, and all other laws of the United States. In providing this approval, Congress is in no way expressing a posi-

tion on whether the Nonintercourse Act applied to the contested transfers. Such approval of these prior conveyances will remove the cloud of Indian claims against all present-day landowners in the town of Lædyard, Connecticut who trace their titles back to the trasfers that are being approved. The proviso to subsection 4(a) ensures that personal claims of individual Indians (other than federal common law fraud claims) that are based on laws of general applicability that protect non-Indians as well as Indians are not affected by the language of subsection 4(a). Thus, any claim by an individual Indian that might be asserted by a non-Indian under generally applicable federal or state law is not intended to be extinguished and may be brought under the same conditions and limitations as would apply if a non-Indian brought a similar claim.

Section 4(b) provides that as a consequence of the approval and ratification of transfers of land or natural resources contained in subsection 4(a), to the extent that such transfers involved any aboriginal title held or claimed by the Mashantucket Pequot Tribe or any member of that Tribe or by any other Indian, Indian nation or tribe or band of Indians, such aboriginal title shall be regarded as extinguished as of the date of the transfer. The language in subsection 4(b) differs in minor ways from the analogous provision of the Maine Indian Claims Settlement Act. These differences are not to be construed as differences of substance and the intent of both subsections is identical; i.e. to make clear that all claims of aboriginal title are extinguished by the provision. The Committee notes that it is questionable whether an individual Indian as distinguished from an Indian tribe, can assert a claim of aboriginal title, but the reference to an individual Indian is intended to ensure that the reach of this subsection is complete.

Section 4(c) provides that as a consequence of the approval and ratification of land or natural resources contained in subsection 4(a), and of the extinguishment of aboriginal title effected by subsections 4 (a) and (b), all claims arising out of or based on the transfers of land or natural resources affected by subsections 4 (a) and (b), including by way of example claims for damages for trespass or use and occupancy, on behalf of the Mashantucket Pequot Tribe or any of its members individually, or on behalf of an Indian, Indian nation, or tribe or band of Indians against the United States, any State, or any political subdivision of any State, or any other person are extinguished as of the date of the transfer.

Section 4(d) provides that section 4 shall take effect upon the appropriation of $900,000 as authorized in subsection 5(e) of this Act. It also provides that the Secretary of the Interior shall publish notice of the appropriation in the Federal Register when the monies authorized in subsection 5(e) are deposited in the settlement fund established in subsection 5(a) of this Act.

Section 5. Mashantucket Pequot settlement fund

Section 5(a) establishes a fund in the United States Treasury which is to be known as the Mashantucket Pequot Settlement Fund. The fund is to be held in trust for the benefit of the Mashantucket Pequot Tribe by the Secretary of the Interior.

Section 5(b) establishes the terms under which the settlement fund is to be administered. This subsection contains several further subdivisions.

Section 5(b)(1) authorizes and directs the Secretary of the Interior to expand the fund and any income accruing to the fund in accordance with section 5. The words "authorized and directed" have replaced the word "shall" at subsection 4(b)(1) of S. 2719 as originally introduced. These words are used to make clear that the Secretary is bound by section 5 and does not have discretion to use the funds in any manner other than the manner prescribed in this section and by the Mashantucket Pequot Tribe pursuant to this section. The Committee notes the use of the phrase "authorized and directed" in subsection 5(d) of the Maine Indian Claims Settlement Act and the phrase is used in the same sense in this Act.

Section 5(b)(2) provides that not less than $600,000 of the settlement fund is to be available until January 1, 1985, for the acquisition by the Secretary of the Interior of private settlement lands. After that time, the Secretary shall make an accounting of the monies remaining, if any, and shall make such monies available to the Mashantucket Pequot Tribe to be used in accordance with the economic development plan that the Tribe is required to prepare by subsection 5(b)(3).

Section 5(b)(3) provides that the Secretary of the Interior shall disburse to the Tribe those monies that are not expended pursuant to subsection 5(b)(2) so that they may be used in accordance with a plan to promote the economic development of the Tribe. Before any monies can be disbursed to the Tribe under subsection 5(b)(3), the Tribe must submit an economic development plan. The Secretary must approve or disapprove the proposed plan within 60 days of its submission. The Secretary must approve the plan if he finds that it is reasonably related to the economic development of the tribe. If the Secretary does not approve the plan, he must advise the Tribe, in detail, of his reasons for rejecting it. He is not required to develop an alternative plan and responsibility for revising the proposal or adopting a new proposal lies with the Tribe. The Tribe may, however, request assistance of the Secretary in preparing the plan and the Secretary is expected to provide such assistance. It is understood that the acquisition of private settlement lands provided for in subsection 5(b)(2) is in no way to be impeded by the economic development plan required by subsection 5(b)(3). It is also understood that monies disbursed pursuant to the economic development plan may be used to acquire additional settlement lands.

Section 5(b)(3) further provides that the Secretary of the Interior may not agree to the investment of the monies in the fund in a manner inconsistent with the Act of June 24, 1938 (52 Stat. 1037; 25 U.S.C. 162a), which authorizes the Secretary to invest tribal trust funds, unless the Tribe executes a waiver of liability on the part of the United States for any loss resulting from that investment. This provision is similar to section 5(b)(1) of the Maine Indian Claims Settlement Act and is intended to protect the Secretary from unwarranted liability arising from tribal decisions to use the fund in a manner inconsistent with the Act of June 24, 1938.

Section 5(b)(3) also provides for the alteration of the economic development plan upon the motion of the Tribe and with the approval of the Secretary. The proposed alteration is to be considered under the same time constraints governing the consideration of the original plan. The Secretary is bound by the same standard of reasonableness

that governs his consideration of the original plan. This mechanism for altering the economic development plan was added in recognition of the possibility that developments unforeseen at the time the original economic development plan was considered may require its adjustment.

Section 5(b)(4) provides that no individual member of the Mashantucket Pequot Tribe may receive any portion of the settlement fund unless pursuant to the economic development plan. This provision was added to further emphasize the understandings of Congress that the settlement fund is to be for the general benefit of the Mashantucket Tribe. The development of privately-owned enterprises employing members of the Tribe may well serve the general benefit of the Tribe, but any expenditure of the settlement must be in accordance with the economic development plan.

Section 5(b)(5) provides that as portions of the settlement fund are disbursed to the proper tribal officials, the United States shall have no further responsibility for the use of those funds disbursed The United States, of course, retains a responsibility for those monies that remain in the settlement fund.

Section 5(b)(6) empowers the Secretary to fix terms for the administration of the fund or for those portions of the fund for which an investment plan has not been developed by the Tribe and approved by the Secretary. This provision is similar to the second proviso in section 5(b)(1) of the Maine Indian Claims Settlement Act and should be construed consistently with it.

Section 5(b)(7) provides that land or natural resources acquired pursuant to subsection 5(b) or otherwise lawfully acquired and located within the settlement lands as defined in subsection 3(d) are to be taken in trust by the United States for the benefit of the Mashantucket Pequot Tribe. The present reservation of the Tribe which is currently held in fee simple, will retain that status. Under section 8(a), however, the present reservation of the Tribe shall be subject to a federal restraint against alienation and, for this reason, the United States will have a trust responsibility to the present reservation. Any lands that may be acquired as part of an approved economic development plan that do not satisfy the definition of settlement lands set forth in subsection 3(d) are not to be taken in trust for the Tribe.

Section 5(b)(8) specifically provides that lands not falling within the definition of "settlement lands" are to be held in fee by the Mashantucket Pequot Tribe and are not to be taken in trust by the United States. It provides further that the United States shall have no trust responsibility with respect to those lands. Finally, the subsection provides that these lands will not be subject to any restraint against alienation imposed by the laws of the United States.

Section 5(b)(9) reflects the intent of Congress that land for the Tribe may be acquired only from willing sellers at a price and other terms of sale mutually agreed upon between the seller and those negotiating the purchase on behalf of the Tribe. Once the seller has agreed on all of the terms governing the acquisition of land for the Tribe, the secretary may then use his condemnation powers to perfect title to the land acquired. The Secretary's ability to acquire land for the Tribe is limited to the authority provided by this Act.

The term "ostensible owner" is intended to include a party who is in possession or who, purporting to be the owner, has granted possession to a lessee or other party, or who otherwise appears to be the owner.

This provision also appears at subsection 5(e) of the Maine Indian Claims Settlement Act. It is intended to limit the otherwise unlimited authority of the United States to condemn land under the Act. It is understood that land is to be offered for sale to fulfill the purposes of the Act. The United States may need to employ its condemnation authority to perfect title to that land. This provision limits the use of that authority to willing seller circumstances envisioned in this Act. This provision should be construed consistently with the similar provision in the Maine Indian Claims Settlement Act.

Section 5(c) provides that land that fits the description of "private settlement lands" under section 3(c) of this Act shall qualify for the status of involuntarily converted property under section 1033 of the Internal Revenue Code. Section 1033 establishes procedures by which property owners who lose their property under a variety of circumstances can qualify for special tax status. Section 1033 covers different kinds of property including, for example, property used for both productive or business purposes as well as property that is not used for those purposes.

The application of section 1033 in necessary to achieve a fair settlement of the Mashantucket Pequot tribal claims. The participation of owners of private property who willingly transfer their property to fulfill the settlement of this and similar claims is an essential part of such settlements. It is understood that, about for the existence of the claims, the private property owners would not transfer their lands at all. These lands, therefore, are to be transferred for an important public purpose and their eligibility for the full range of provisions set forth in section 1033 is provided in recognition of the unusual circumstances that prompt the land transfers.

Section 10 of the Maine Claims Settlement Act also provided that section 1033 would apply to land transfers that were made to fulfill the purposes of that Act. Section 10 of the Maine Indian Claims Settlement differs from section 5(c) of this Act only in that the Maine Act limited the applicability of section 1033 to lands acquired with moneys from the Land Acquisition Fund and the Mashantucket Pequot Indian Claims Settlement Act limits the applicability of section 1033 to "private settlement lands" as defined in section 3(c) of this Act. Otherwise, the two provisions are to be construed consistently with one another.

Section 5(d) prohibits the Secretary of the Interior from expending any of the sums deposited in the settlement fund pursuant to this act for the benefit of the Mashantucket Pequot Tribe until he finds that appropriate tribal officials have executed documents reliquishing all of the claims included within sections 4 and 10 of this Act. This action on the part of the Tribe shall include the stipulation by the Tribe to the final dismissal by the appropriate court of all its claims with prejudice. This provision is similar to subsection 5(f) of the Maine Indian Claims Settlement Act and is to be construed consistently with it.

Section 5(e) authorizes the appropriation of $900,000 to be deposited in the settlement fund established under subsection 5(a) of this act.

Section 6. Jurisdiction over reservation

Section 6 provides that the reservation of the Mashantucket Pequot Tribe is subject to the full extent of State jurisdiction in section 3(g) of this Act shall be Indian Country as defined in title IV of the Act of April 11, 1968, the Indian Civil Rights Act. The Tribe's reservation has this status notwithstanding section 406 of the Indian Civil Rights Act which requires a majority vote of the enrolled members of an Indian tribe before a state may assume jurisdiction over that tribe.

Section 7. Limitation of actions: Federal court jurisdiction

Section 7(a) provides a 180 day time limit on any challenge to the constitutionality of this Act. Such a challenge must be raised either by a pleading contained in a complaint or in a reply to a complaint. The 180 day period runs from the date of the enactment of this Act and this time limit applies notwithstanding any other provision of law.

Section 7(b) establishes that the United States District Court for the District of Connecticut has exclusive jurisdiction over any action in which the constitutionality of this Act is in question.

Section 7(c) authorizes the defendant in any action to which subsection 7(a) applies and which is brought in any state court to remove that action to the United States District Court for the District of Connecticut.

Section 7(d) provides that, except as provided in this Act, nothing in this Act shall be interpreted either as a jurisdictional act, or to confer jurisdiction to bring suit, or to represent the implicit consent of the United States or its officers to be sued by any Indian, Indian nation, or tribe or band of Indians with respect to the claims extinguished by the operation of this act.

This subsection is identical to section 13 of the Maine Indian Claims Settlement Act is to be construed consistently therewith. The original version of S. 2719 did not contain this limitation. It was added to make it clear that the Congress does not intend this Act to be interpreted in any way as consent on the part of the United States to be sued by any individual Indian or by any Indian tribe except as provided in this Act.

Section 8. Restriction against alienation

Section 8(a) provides that, subject to subsection 8(b), those lands within the Mashantucket Pequot Tribe's reservation, as defined in subsection 3(g) of this Act, which are to be taken in trust by the Secretary of the Interior for the Tribe or which are subject to a federal restraint against alienation following the enactment of this Act are to be subject to all the laws of the United States relating to the transfer of Indian lands, including the Nonintercourse Act, currently codified at 25 U.S.C. 177.

Section 8(b) provides that notwithstanding subsection 8(a), the Mashantucket Pequot Tribe may lease its lands for an unlimited term of years to the Mashantucket Pequot Housing Authority or any successor in interest to that Authority. Unlike most instances, where tribal land is leased, this does not require Secretarial approval.

Section 9. Extension of Federal recognition and privileges

Section 9(a) provides federal recognition to the Mashantucket Pequot Tribe notwithstanding any other provision of law. Subsection 9(a) also provides that all laws and regulations of the United States that apply generally to Indians or Indian nations or tribes or bands of Indians shall apply to the Mashantucket Pequot Tribe to te extent that such laws and regulations are not inconsistent with any specific provision of this Act.

The Committee notes that the extension of federal recognition to the Mashantucket Pequot Tribe by statute is an unusual procedure. Ordinarily, an Indian tribe would gain recognition through the federal acknowledgement project (FAP). The federal acknowledgment project is administered by the Bureau of Indian Affairs and provides an administrative review of applications for federal recognition. The review is conducted according to uniform criteria that are set forth at 25 C.F.R. Part 83. A preliminary review of the petition of the Mashantucket Pequot Tribe by FAP disclosed no impediments to federal recognition.

In order to facilitate this Settlement, and based on the available evidence, Congress finds that the Mashantucket Pequot Tribal Council represents the Mashantucket Pequot Tribe today and is the successor in interest to the aboriginal entity known as the Western Pequot Tribe. (See subsection 2(e) of this Act). In addition, this Act defines the Mashantucket Pequot Tribe as being that body that is also known as the Western Pequot Tribe and that is identified by chapter 832 of the Connecticut General Statutes. It also defines the Tribe as being represented by the Mashantucket Pequot Tribal Council. (See section 3(a) of this Act.)

Furthermore, this Act specifically provides that 25 U.S.C. 177, the Nonintercourse Act, applies to those lands within the reservation of the Tribe as defined by subsection 3(g) that are taken in trust for the Tribe. The United States Court of Appeals for the First Circuit has held in *Joint Tribal Council of the Passamaquoddy Tribe* v. *Morton*, 528 F.2d 370 (1st Cir. 1975), that ". . . the Nonintercourse Act imposes upon the federal government a fiduciary's role with respect to protection of the lands of a tribe covered by the Act . . ." As a result, the application of the Nonintercourse Act by express operation of this act will ipso facto establish a trust relationship between the Mashantucket Pequot Tribe and the United States.

Finally, it is desirable in settling claims such as these that the Congress designate a given entity as being empowered to deal on behalf of the tribe. Such a designation serves to bar the raising of later claims by other entities purporting to be the tribe. For this and the other reasons cited, this Act expressly recognizes the Mashantucket Pequot Tribe.

The Committee notes that precedent for this action is found in the recognition of the Houlton Band of Maliseet Indians under the Maine Indian Claims Settlement Act.

Section 9(b) requires the Mashantucket Pequot Tribe to file its governing document and any amendment to that document with the Secretary of the Interior. The governing document of the Tribe must be consistent with this Act and the Act to Implement the Settlement of the Mashantucket Pequot Indian Land Claim that was enacted by the

State of Connecticut on June 9, 1982, and approved by the Governor of Connecticut on the same day.

Section 9. (c) provides that the Mashantucket Pequot Tribe and its members shall be eligible for the services provided to all federally recognized Indian tribes and their members as of the date of the enactment of this Act notwithstanding any other provision of law.

Section 10. Other claims discharged by the act

Section 10 provides that, except as expressly provided in this Act, this Act shall act as a general discharge and release of all obligations of the State of Connecticut and of all the political subdivisions, agencies, departments, and of all the officers or employees of those entities which arise out of any treaty or agreement with either the Mashantucket Pequot Tribe or the United States as trustee for the Tribe.

This provision is similar to section 12 of the Maine Indian Claims Settlement Act.

Section 11. Inseparability

Section 11 provides that, should any provision in section 4 be held invalid, it is the intent of Congress that the entire Act be invalidated. In the event that any other section or provision of this Act is held invalid, Congress intends that the Act shall continue in full force and effect.

Section 4 of this Act provides Congressional approval of any transfer of land or natural resources by or on behalf of the Mashantucket Pequot Tribe anywhere in the United States and of any transfers of land or natural resources by or on behalf of any Indian, Indian nation, or tribe or band of Indians in the town of Ledyard, Connecticut. The approval is given as of the date of the transfer. This section also acts to extinguish aboriginal title and all damage claims related to such land or natural resources.

The purpose of this Act is to settle the claims of the Mashantucket Pequot Tribe. The validity of section 4 is essential to the final resolution of those claims. This section recognizes the importance of section 4 by conditioning the effectiveness of the entire Act on its validity.

This section is similar to section 15 of the Main Indian Claims Settlement Act and is to be interpreted consistently therewith.

COST AND BUDGETARY CONSIDERATIONS

The Congresional Budget Office submitted the following cost estimate on S. 1499.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., July 29, 1983.

HON. MARK ANDREWS,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 1499, the Mashantucket Pequot Indian Claims Settlement Act, as ordered reported by the Senate Select Committee on Indian Affairs, July 28, 1983. The bill authorizes the appropriation of $900,000 to pro-

vide for the settlement of land claims of the Mashantucket Pequot Tribe of Ledyard, Connecticut.

Upon appropriation all funds would be deposited into the Mashantucket Pequot Settlement Fund. This fund shall be held in trust by the Secretary of the Interior for the purposes specified in the bill. All monies appropriated for the fund are expected to be outlayed between fiscal years 1984 and 1988 depending upon the timing of land purchases and other activities authorized by the bill. In addition, this bill would make members of the tribe eligible for benefits available through a number of discretionary federal programs. Thus, while no additional expenditures are mandated by this section of the bill, relevant federal agencies would be required to include these groups among those eligible for benefits and may seek additional funds in order to provide such benefits.

Enactment of this bill would not affect the budgets of state and local governments beyond the contribution to the settlement by the State of Connecticut.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

JAMES BLUM
(For Alice M. Rivlin, Director).

STATEMENT OF JOHN W. FRITZ, DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS, UNITED STATES SENATE, ON S. 1499, A BILL "TO SETTLE CERTAIN CLAIMS OF THE MASHANTUCKET PEQUOT INDIANS," JULY 19, 1983

Mr. Chairman and Members of the Committee, I am pleased to present the views of the Department of the Interior on S. 1499, a bill "To settle claims of the Mashantucket Pequot Indians."

We would not object to enactment of S. 1499.

S. 1499 would provide for the settlement of land claims of the Mashantucket Band of the Western Pequot Indian Tribe of Connecticut. The bill would authorize congressional consent and approval of prior transfers of land or natural resources located within the United States by the tribe or by any other Indian or tribal entity located within the town of Ledyard, Connecticut. The bill would also extinguish any aboriginal title and any tribal claims for damages or possession of land and natural resources.

A claim settlement fund in the amount of $900,000 would be established to compensate the tribe for the extinguishment of such claims. It would credit the State of Connecticut with a contribution of $450,000 based on the provision of past services to the tribe, and a contribution of 20 acres of land and extensive road work on the reservation by the Connecticut Department of Transportation. Finally, the bill would extend Federal recognition to the Western Pequot Tribe.

The President previously vetoed S. 366, a somewhat similar bill on April 5, 1983. A copy of the President's Veto Message is enclosed.

S. 1499 reflects additional contributions mentioned above by the State of Connecticut not fund in S. 366 which was vetoed by the Presi-

dent. It is our understanding and that of the members of the Connecticut delegation who were involved in these negotiations that the settlement embodied in S. 1499 not be considered as a model for settling claims of other Indian tribes. Furthermore, we wish to make it clear to any other tribes and states who desire legislative settlements of Indian land claims that we will not agree to such settlements unless we are included in the negotiations before the legislation is introduced.

As to Federal recognition, we received the Mashantucket Pequot's petition only a few weeks ago. Therefore, we have not had sufficient time to thoroughly review it and cannot categorically state that they would meet the criteria of our Federal acknowledgment project. The Mashantucket Pequot Tribe has, however, held title to their present State reservation of 220 acres for over 250 years. Thus, it would appear that the tribe has a prima facie case for Federal recognition status and we do not object to their recognition. Moreover, we do recognize Congress' plenary power over Indian tribes.

Indeed, we must not forget that Congress' decision to recognize the Mashantucket Pequots as a tribe has consequences far beyond the settlement of an ancient land claim. Unless otherwise expressly provided for in the legislation, Congressional recognition of a group of Indian descendants as a tribe subjects that group to a vast and complex body of law both establishing certain rights and benefits and also imposing certain restrictions on the group. Because of these consequences, the Department does not believe it can support any future legislation which would legislatively recognize a group of Indian descendants as a tribe unless it has had an adequate opportunity to review the historical and current factual bases for the group's claim to tribal status through the Bureau's Federal Acknowledgement Office. Such a review is necessary not only to ensure the equitable and uniform application of the special laws relating to Indians but also is mandated by fundamental fairness to those other Indian groups which have labored diligently to compile a comprehensive record in support of their claim to tribal status and waited patiently in turn for their petitions' active consideration.

That concludes my statement. I would be glad to answer any questions the Committee may have.

To the Senate:

I am returning, without my approval, S. 366, the "Mashantucket Pequot Indian Claims Settlement Act."

This bill would settle claims of the Mashantucket Band of the Western Pequot Indian Tribe to approximately 800 acres of land in the town of Ledyard, Connecticut. In settling the claims, the legislation would generally: (1) extinguish any aboriginal title and any tribal claims for damages or possession of the land and natural resources; (2) establish a $900,000 Federal claims settlement fund to compensate the Indians for extinguishment of the claims; and (3) extend Federal recognition, with all attendant benefits and services, to the Western Pequot Indian Tribe.

The claim that would be settled by this bill is not against the Federal Government, but against the State of Connecticut, which sold the Indian land, and against the present owners of the lands concerned.

However, the costs of the settlement provided in this bill would be borne almost entirely by the Federal Government.

Given the concerted effort that has already been made to develop a mutually satisfactory settlement for the Western Pequot's land claims, I agree that the most desirable approach to resolution and extinguishment of these claims is through agreements negotiated among the parties concerned and ultimately ratified by the Federal Government. However, this process must recognize certain principles if equity and fairness to all parties are to be achieved. Unfortunately, I find S. 366 violates several of these principles.

First, even if Federal participation in this settlement is warranted, sufficient information does not exist to determine the validity of the claim or the appropriateness of the proposed $900,000 settlement. This settlement is not based on the formula for Eastern Indian land claims settlements supported by my Administration. The Administration formula is based on the difference between land value and compensation received at the time of the land transfer (in this case 1855), plus interest. If the type of valuation for land claims settlements contemplated by this bill were applied across the board to all potential claims of this nature, it could require payment by the taxpayers of billions of dollars.

Second, S. 366 provides for an unacceptably low level of State contribution to the settlement—only 20 acres of State land with an estimated value of about $50,000. The Administration has urged that an affected State should pay for at least one-half of settlement costs in claims such as this, which are not against the Federal Government but against the State and private parties who would be the primary beneficiaries of any settlement.

Finally, the Tribe may not meet the standard requirements for Federal recognition or services that are required of other tribes. The Federal Government has never entered into treaties with this Tribe, and the Bureau of Indian Affairs has never provided services to them or exercised jurisdiction over any Indian lands in Connecticut. The government-to-government relationship between the Western Pequot Tribe and the Federal Government that would be established by this bill is not warranted at this time, pending further study by Interior. Extending Federal recognition to the Tribe would bypass the Department of the Interior's administrative procedures that apply a consistent set of eligibility standards in determining whether or not Federal recognition should be extended to Indian groups.

I am convinced that a satisfactory resolution of the Western Pequot's land claims can be achieved. However, this will require (1) verification of the claim, including the amount of any monetary settlement based on the formula I have outlined above, (2) completion by Interior of its administrative procedure for determining whether or not Federal recognition of the Tribe is appropriate, and (3) payment by the State of Connecticut of at least one-half of any settlement costs.

I am directing the Secretary of the Interior to enter negotiations with the parties at interest in this case to determine an acceptable settlement, consistent with the Administration's principles, and report his recommendations to me and to the Congress.

RONALD REAGAN.

THE WHITE HOUSE, *April 5, 1983.*

STATE OF CONNECTICUT,
Hartford, Conn., July 19, 1983.

Hon. MARK ANDREWS,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I am writing in support of Senate Bill 1499, entitled "Mashantucket Pequot Indian Claims Settlement Act." As you know, this bill would establish a trust fund of $900,000.00 to pay property owners who have agreed to sell their land to the Tribe, thus enabling the Tribe to regain possession of land which it formerly owned. The bill would also grant Federal recognition to the Tribe, and expedite the equitable resolution of a law-suit which has clouded title to lands located in the town of Ledyard, to the benefit of the Tribe and affected property owners.

The State of Connecticut has made substantial contributions of funds, land, time, and other resources to the Mashantucket Pequot over the years. These contributions are recognized in Section 2(f) of the bill, which also states that our state government has agreed to construct and/or repair three sections of paved or gravel roadways within the reservation in order to induce the Federal government to enact this bill into law.

The Mashantucket Pequot are an asset to the State of Connecticut and to the people of the United States. They are honest, hard-working, progressive, and have almost realized their dream of regaining and developing their land for the benefit of all the members of their Tribe. Passage of this bill will ensure the realization of that dream, assist in the equitable settlement of a pending action which has clouded title to certain parcels of land for years, and assist the Tribe in developing its resources in an orderly and beneficial manner.

In view of the above, I therefore earnestly request your support of this legislation.

Sincerely,

WILLIAM A. O'NEILL,
Governor.

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 2719 will have no regulatory impact and only minimal paperwork impact.

EXECUTIVE COMMUNICATIONS

[Subsection Senate Bill No. 507]

SPECIAL ACT NO. 82-31—AN ACT TO IMPLEMENT THE SETTLEMENT OF THE MASHANTUCKET PEQUOT INDIAN LAND CLAIMS

Be it enacted by the Senate and House of Representatives in General Assembly convened:

SECTION 1. The following terms as used in this act shall have the following meanings: "Indian" means all persons recognized by the governing body of the Mashantucket Pequot tribe as members of

that tribe; and "reservation" means the Mashantucket Pequot reservation in the town of Ledyard, owned by the Mashantucket Pequot tribe or held in trust by the United States for said tribe, including those lands conveyed to the tribe by Edwain A. Card by deed in May, 1896, and those lands conveyed to or acquired by said tribe as part of the settlement of its land claims in the town of Ledyard.

SEC. 2. (a) The State of Connecticut confirms to the Mashantucket Pequot tribe in fee simple the lands comprising the reservation of said tribe, and the state releases and relinquishes to the Mashantucket Pequot tribe any claim of right, title or interest which the state may have in said reservation lands.

(b) The tribe, its reservation and the residents thereof shall be entitled to receive the same services and protection from the state as are provided to the other tribes, their reservations and the residents thereof pursuant to chapter 824 of the general statutes; provided, that subsection (b) of section 47–59b, sections 47–60 and 47–64, and subsection (d) of section 47–66 of the general statutes shall not appy to the Mashantucket Pequot tribe; and provided further that the commissioner of environmental protection shall take no action pursuant to section 47–65 with respect to the reservation of the Mashantucket Pequot tribe without the consent of the governing body of said tribe.

(c) None of the lands in the reservation of the Mashantucket Pequot tribe shall be subject to taxation by the state or any subdivision thereof.

SEC. 3. Notwithstanding the provisions of any general statutes to the contrary, the governor is authorized to convey on behalf of the State of Connecticut to the Mashantucket Pequot Tribe, the following lands:

(1) A certain piece or parcel of land, containing two acres, more or less, situated in the Town of Ledyard, County of New London, State of Connecticut, bounded and described as follows:

Wortherly: By land now or formerly of Mary Gonch; Easterly: By land now or formerly of Mary Gonch; Southerly: By land now or formely by Mary Gonch; Westerly: By land now or formerly of Mary Gonch.

Being part of the land purchased by Mary Gonch from the Federal Land Bank, February 17, 1940, as recorded in the Land Records of the Town of Ledyard, Volume 16, Page 380, which premises are shown on a map entitled, "Connecticut State Park and Forest Commission—Pequot Burial Ground; Scale 1″=100′ and dated August 1967", on file or to be filed in the land records of said Town of Ledyard, on which the map the premises herein conveyed are shown as Parcel #1.

(2) A certain piece or parcel of land, containing 17.5 acres, more or less, situated in the Town of Ledyard, County of New London, State of Connecticut, bounded and described as follows:

Northerly: By Fanning Road and land now or formerly of Mary Gonch; Easterly: By land now or formerly of Mary Gonch; Southerly: By land now or formerly of E. L. Scholfield; Westerly: By Fanning Road and land now or formerly of Mary Gonch.

And being part of the land purchased by said Mary Gonch from the Federal Land Bank, February 17, 1940, as recorded in the Land Records of said Town of Ledyard, Volume 16, Page 380, which premises are shown on a map entitled, "Connecti-

cut State Park and Forest Commission—Pequot Burial Ground; Scale 1"=100' and dated August 1967", on file or to be filed in the land records of said Town of Ledyard, on which map the premises herein conveyed are shown as Parcel #2.

SEC. 4. Any transfer of land or other natural resources located within the town of Ledyard from, by or on behalf of any Indian nation, or tribe or band of Indians which occurred prior to the effective date of this act, shall be deemed to have been made in accordance with chapter 824 of the general statutes.

SEC. 5. This act shall take effect upon the enactment of legislation by the United States providing for extinguishment of aboriginal and all other Indian tribal land claims by or on behalf of the Mashantucket Pequot tribe and any other such claims in the town of Ledyard which are maintained under laws of the United States that are specifically applicable to transfers of land or natural resources from, by, or on behalf of any Indian, Indian nation or tribe of Indians.

Certified as correct by:

_____,
Legislative Commissioner.

_____,
Clerk of the Senate.

_____,
Clerk of the House.

Approved 2:35 p.m., June 9, 1982.

WILLIAM A. O'NEILL,
Governor.

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